

IN RE:

No. M2006-01002-COA-R3-CV

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Receivership Management, Inc., Receiver for Sentinel Trust Company*

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INTRODUCTION

This case presents an appeal as of right by Appellants, Danny Bates, Clifton T. Bates, Howard H. Cochran, and Gary L. O'Brien, of an order entered by the Lewis County Chancery Court approving the sale of Sentinel Trust Hohenwald, Tennessee property, pursuant to Tenn. Code Ann. § 45-2-1504. This order, which was entered on April 12, 2006, was certified as a final appealable order pursuant to Tenn.R.Civ.P. 54.02.

This brief is submitted on behalf of the Appellees, Acting Commissioner Greg Gonzales and Receivership Management, Inc. The record in this case was consolidated with the records in two prior appeals, No. M2005-00031-COA-R3-CV and No. M2005-01773-COA-R3-CV. It consists of eleven (11) volumes of the technical record, which shall be referred to as "T.R."; four (4) volumes of transcripts of hearings before the Lewis County Chancery Court, which shall be referred to as "T.E."; and one volume of exhibits, which shall be referred to as "Exh."

STATEMENT OF THE ISSUES

1. Whether the doctrine of the law of the case bars this Court from reconsidering issues raised by Appellants?
2. Whether the Receivership Court erred in approving the sale of the Hohenwald property?

STATEMENT OF THE CASE

This case was instituted on May 18, 2004, when Appellee Kevin P. Lavender, Commissioner of the Tennessee Department of Financial Institutions (“Commissioner”), took emergency possession of Sentinel Trust Company (“Sentinel”), a state-chartered trust company, and filed a Notice of Possession with the Lewis County Chancery Court, pursuant to Tenn. Code Ann. §§ 45-2-1502(b)(1) and (c)(1).¹ The Notice stated that the Commissioner had found: (1) that Sentinel had used pooled fiduciary funds, which were to be held in trust for certain bond issues, to provide operating capital for non-related defaulted bond issues, thereby creating a fiduciary cash shortfall that greatly exceeded Sentinel’s current operating capital, and (2) that Sentinel had failed to reconcile fiduciary cash and corporate cash accounts in a timely and accurate fashion and had otherwise failed to keep accurate books and records.² The Commissioner further found that Sentinel's potential liability for the cash shortfall in the pooled fiduciary account exceeded its current capital level and that Sentinel has been unable to provide a viable capital plan that would eliminate the deficiency and make the account whole.³

Accordingly, the Commissioner found that the following grounds for possession, as set forth in Tenn. Code Ann. § 45-2-1502(a), existed: (1) Sentinel’s business was being conducted in an unsound manner, and (2) Sentinel was unable to continue normal operations.⁴ Additionally, as

¹T.R. Vol. I, 1-4.

²*Id.*

³*Id.*

⁴*Id.*

required by Tenn. Code Ann. § 45-2-1502(c)(1), the Notice of Possession provided that “[a]ny person aggrieved or directly affected by the Commissioner’s emergency possession of Sentinel Trust Company may have judicial review in Davidson County Chancery Court by common-law writ of certiorari, as provided in Title 27, Chapter 9, of Tennessee Code Annotated.”⁵

That same day, the Commissioner also issued an order appointing Appellee, Receivership Management, Inc., to act as the Receiver of Sentinel (“Receiver”), pursuant to Tenn. Code Ann. § 45-2-1502(b)(2).⁶ Upon taking possession, the Receiver and Department of Financial Institutions personnel immediately began reviewing and analyzing Sentinel’s books and records in an attempt to determine the true financial status of the company, including the extent of the shortfall in the pooled fiduciary account, as of the date of possession (May 18, 2004).⁷

On June 15, 2004, the Receiver and Department personnel issued a preliminary report (“the Report”) on the fiduciary and corporate financial positions of Sentinel, based upon a review of Sentinel’s own records.⁸ Those records reflected, as set forth in the Report, that Sentinel had a cash deficiency or shortfall in the pooled fiduciary account⁹ that ranged from \$7,612,218.00 to \$8,430,722.00.¹⁰ In addition, the Receiver and Department personnel had discovered bond principal

⁵*Id.*

⁶T.R. Vol. I, 4.

⁷T.R. Vol. I, 75-76.

⁸T.R. Vol. I, 84-99.

⁹The pooled fiduciary account is a Sentinel account held at SunTrust Bank, in which funds were deposited, in trust, by bond issue borrowers and/or issuers for payment of principal and interest and other matters associated with the particular bond issue. The funds in that account were co-mingled by Appellants and were withdrawn by them for purposes other than those for which the funds were deposited.

¹⁰*Id.* at 92-93.

and interest checks in Sentinel's vault written on the pooled fiduciary account totaling \$559,873, thus increasing the cash deficiency in the pooled fiduciary account by this amount.¹¹ The Report also indicated that, as of May 18, 2004, Sentinel had total corporate assets of \$1,389,682. Thus, taking into account the cash deficiency in the pooled fiduciary account (which is reflected as an accounts payable), the Report determined that Sentinel was insolvent in an amount of at least \$6,225,445 as of May 18, 2004.¹²

Based upon the findings contained in the Report and the record as a whole, the Commissioner determined that liquidation of Sentinel in accordance with the provisions of Tenn. Code Ann. §§ 45-2-1502(c)(2) and 1504 was necessary and appropriate. Accordingly, on June 18, 2004, the Commissioner issued a Notice of Liquidation of Sentinel Trust Company, which was filed with the Lewis County Chancery Court.¹³ As with the Notice of Possession, the Notice of Liquidation specifically provided that "[a]ny person aggrieved or directly affected by the Commissioner's determination to liquidate Sentinel Trust Company may have judicial review in Davidson County Chancery Court by common law writ of certiorari, as provided in Title 27, Chapter 9 of Tennessee Code Annotated, pursuant to Tenn. Code Ann. § 45-1-108(a)."¹⁴ On June 29, 2004, Appellants, who are the former officers and directors of Sentinel Trust Company, filed a petition in Davidson County Chancery Court for common law writ of certiorari seeking supervisory judicial review of the

¹¹*Id.* at 85.

¹²*Id.* at 94. This insolvency does not include the \$559,873 in bond principal and interest checks, discussed above, which increases the fiduciary cash deficiency and would increase the insolvency by a corresponding amount.

¹³T.R., Vol. I, 70-74.

¹⁴*Id.* at 71-72.

Commissioner's decisions to take possession of and to liquidate Sentinel Trust Company.¹⁵ The Commissioner's decisions to take possession and liquidate Sentinel Trust Company were upheld both by the trial court and this Court on appeal.¹⁶

Upon the issuance and filing of the Notice of Liquidation, the Commissioner, through his appointed Receiver, began the orderly process of liquidating Sentinel Trust Company, in accordance with the directives of Tenn. Code Ann. § 45-2-1504. Those efforts included the transferring of fiduciary positions held by Sentinel Trust Company on non-defaulted bond issues and the sale of certain real property located in Davidson County, Tennessee, and owned by Sentinel Trust. Both of these actions were appealed by the former management of Sentinel, who are also Appellants in this appeal, but were upheld by this Court.¹⁷

As part of the ongoing efforts to liquidate Sentinel Trust Company, on March 22, 2006, the Commissioner and Receiver filed a Motion for Approval of Sale of Sentinel Trust Hohenwald, Tennessee property, in accordance with Tenn. Code Ann. §§ 45-2-1502(b) and 45-2-1504(a)(1).¹⁸ On April 11, 2006, the day before the scheduled hearing on the motion, Mr. Bates, the former President of Sentinel, filed an Objection to the Hohenwald Sale Motion.¹⁹ The hearing was subsequently held on April 12, 2006, and the Lewis County Chancery Court granted the motion for

¹⁵See Exh. 1.

¹⁶See *In re Sentinel Trust Company*, App. Nos. M2005-00031-COA-R3-CV, M2005-017730-COA-R3-CV, M2005-01073-COA-R30CV, slip op. (December 29, 2005), *p.t.a. denied* (July 3, 2006).

¹⁷*Id.*

¹⁸T.R. Vol. 1, 1-37.

¹⁹T.R. Vol. 1, 38-39.

approval to sell the Hohenwald property and certified the order as final pursuant to Tenn.R.Civ.P.

54.02.²⁰ Mr. Bates filed a timely Notice of Appeal of this order.²¹

²⁰T.E. Vol. 1, 40-42.

²¹T.E. Vol. 1, 43-44.

STATEMENT OF FACTS

To the extent that factual development is needed regarding the background of Sentinel Trust Company and the justification of the Commissioner's taking possession of Sentinel Trust Company, the Commissioner and Receiver rely upon the findings of fact as set forth by this Court in *In re Sentinel Trust Company*, App. Nos. M2005-00031-COA-R3-CV, M2005-01773-COA-R3-CV, and M2005-01073-COA-R3-CV (hereinafter referred to as *Sentinel Trust I*).

Regarding the factual development related to the sale of the Hohenwald property, the record before this Court is undisputed. The Hohenwald building was built in the 1999-2000 timeframe and had served as the main office for the operations of Sentinel Trust Company. At the time of the May 18, 2004, institution of the Sentinel Trust Receivership, the Hohenwald property was titled in the name of Sentinel Trust Company.²² Thus, it is undisputed that the Hohenwald property, being titled to and owned by Sentinel Trust Company, was an asset of that entity and under the exclusive management and control of the Commissioner and his appointed Receiver to liquidate.²³ Moreover, it was an asset having value in excess of five hundred dollars (\$500) and, thus, pursuant to Tenn. Code Ann. § 45-2-1504(a)(1), approval of the Receivership Court was required before the Commissioner/Receiver could sell the property as part of the orderly liquidation of Sentinel Trust.

In taking steps to sell the Hohenwald property, the Receiver, acting on behalf of the Commissioner, entered into a listing agreement with the noted Nashville/Middle Tennessee real estate company, Shirley Zeitlin & Company Realtors, to market the Hohenwald Property; Affiliate Broker,

²²T.R. Vol. 1, 2.

²³Tenn. Code Ann. § 45-2-1502(b).

Arthur D. Victorine, has been the listing agent on that property.²⁴ The initial list price for the Hohenwald property was \$1.1 million. That list price was established based upon a review of tax appraisal records and upon estimations of what construction and related costs were when the building was built back in 1999-2000.²⁵

Despite active marketing efforts, the first five months the Hohenwald property was on the market yielded very little interest and no offers whatsoever. In February 2005, the Hohenwald property was placed on the active MSL listing system at the list price of \$1.1 million and was advertised in a bi-monthly publication, the *Commercial Real Estate Connection in Tennessee*, which has a subscription base of approximately 25,000 commercial real estate agencies and agents across Tennessee. No response or interest was expressed in the Hohenwald property at the list price of \$1.1 million as a result of these advertising efforts.²⁶

However, shortly after the Hohenwald property was placed on the MLS listing system in February 2005, a Ms. Allen contacted the listing agent expressing interest. Ultimately, toward the end of the year 2005, the Allens made an offer for the Hohenwald property.²⁷ The Commissioner/Receiver, through the listing agent, began negotiating the purchase price with the Allens, and during the course of those negotiations, an appraisal was performed by a qualified appraiser local to and knowledgeable of the Hohenwald/Lewis County area. That appraisal

²⁴T.R. Vol. 1, 28-31.

²⁵*Id.*

²⁶*Id.*

²⁷*Id.*

established \$430,000 as a fair market value for the Hohenwald property.²⁸ Ultimately, an agreement was reached with the Allens to purchase the Hohenwald property for \$450,000, and the parties entered into a Commercial Purchase and Sale Agreement on March 20, 2006.²⁹

In objecting to the sale of the Hohenwald property, Mr. Bates submitted no evidence disputing either the validity of the appraisal of the Hohenwald property or that the \$450,000 purchase price was a fair and reasonable price for the Hohenwald property. Moreover, there is nothing in the record that would indicate that keeping the property on the market for some “hoped for” higher offer would have resulted in the Hohenwald property being sold later for a higher amount. Indeed, the only, and undisputed, evidence in the record is exactly the opposite. As Mr. Victorine, the listing agent, stated in his Affidavit:

Based upon (1) my background, (2) my experience in marketing the Hohenwald Property; (3) my gaining an appreciation for the depressed nature of the economy and real estate market in Lewis County, (4) the two offers actually received on the Hohenwald Property (the \$450,000 offer from the Allens and the lower offer from the other couple) and (5) the appraisal, it is my opinion that the Hohenwald Property is very unlikely to sell for an amount materially higher than \$450,000. It is a nice property, but its location in Hohenwald greatly limits, and almost makes non-existent, a market for this type of property.³⁰

²⁸T.R. Vol. 1, 22-25.

²⁹T.R. Vol. 1, 10-21.

³⁰T.R. Vol. 1, 31.

ARGUMENT

I. The Doctrine Of The Law Of The Case Bars This Court From Reconsidering Issues Raised by Appellants.

Appellants have raised a number of issues on appeal that were previously raised and determined by this Court in *Sentinel Trust I*. Accordingly, the law of the case doctrine prohibits reconsideration of these issues.

Memphis Publishing Company v. Tennessee Petroleum Underground Storage Tank Board is the seminal case discussing the doctrine of the law of the case. In that case, our Supreme Court stated as follows:

The phrase “law of the case” refers to a legal doctrine which generally prohibits reconsideration of issues that have already been decided in a prior appeal of the same case. 5 Am.Jur.2d *Appellate Review* § 605 (1995). In other words, under the law of the case doctrine, an appellate court’s decision on an issue of law is binding in later trials and appeals of the same case if the facts on the second trial or appeal are substantially the same as the facts in the first trial or appeal. *Life & Casualty Ins. Co. v. Jett*, 175 Tenn. 295, 299, 133 S.W.2d 997, 998-999 (1939); *Ladd v. Honda Motor Co., Ltd.*, 939 S.W.2d 83, 90 (Tenn.Ct.App. 1996). The doctrine applies to issues that were actually before the appellate courts in the first appeal and to issues that were necessarily decided by implication. *Ladd*, 939 S.W.2d at 90 (citing other authority). The doctrine does not apply to dicta. *Ridley v. Haiman*, 164 Tenn. 239, 248-49, 47 S.W.2d 750-752-53 (1932); *Ladd*, 939 S.W.2d at 90.

The law of the case doctrine is not a constitutional mandate nor a limitation on the power of the court. 5 Am.Jur.2d *Appellate Review* § 605 (1995); *Ladd*, 939 S.W.2d at 90. Rather, it is a longstanding discretionary rule of judicial practice which is based on the common sense recognition that issues previously litigated and decided by a court of competent jurisdiction ordinarily need not be revisited. *Ladd*, 939 S.W.2d at 90 (citing other cases). This rule promotes the finality and efficiency of the judicial process, avoids

indefinite relitigation of the same issue, fosters consistent results in the same litigation, and assures the obedience of lower courts to the decisions of appellate courts. *Ladd*, 939 S.W.2d at 90; 5 Am.Jur.2d *Appellate Review* § 605 (1995); 1B James W. Moore, Moore's Federal Practice P0.404(1) (2d ed. 1995); 18 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4478, at 790 (1981).

* * *

There are limited circumstances which may justify reconsideration of an issue which was issue decided in a prior appeal: (1) the evidence offered at trial or hearing after remand was substantially different from the evidence in the initial proceeding; (2) the prior ruling was clearly erroneous and would result in a manifest injustice if allowed to stand; or (3) the prior decision is contrary to a change in the controlling law which has occurred between the first and second appeal. See generally 5 Am.Jur.2d *Appellate Review* §§ 611-613 (1995 & 1998 Supp.); Miller, *supra*, ¶ 0.404[1]; Wright, *et al.*, *supra*, § 4478, at 790; (other citations omitted).³¹

Appellants have raised the following issues in this appeal:

- Did the Commissioner have statutory authority to take possession and place into receivership a trust company? [Appellant's Issues No. 1(i), (iv) and (vi)].
- Assuming the Commissioner had the authority to take possession of a trust company, did the Commissioner meet the statutory requirements for taking possession without providing a pre-deprivation due process hearing? [Appellant's Issue No. 1(ii)].
- Was there substantial and material evidence in the record to support the Commissioner's determination that Sentinel Trust Company was insolvent? [Appellant's Issue No. 1(iii)].
- Whether the provisions of the Tennessee Banking Act pursuant to which the Commissioner acted are unconstitutional on their face because they authorize a member of the executive branch of

³¹975 S.W.2d 303, 306 (Tenn. 1998). See also *Vest v. Duncan-Williams, Inc.*, No. M2005-004660COA-R3-CV, slip op. at 2 (2006 WL 2252750) (Aug. 3, 2006); *Orlando Residence, Ltd. v. Nashville Lodging Comany*, No. M2005-00030-COA-R3-CV, slip op. at 5 (2006 WL 1896368) (July 7, 2006) *rehearing denied* (Aug. 1, 2006); *In re Estate of Harold L. Jenkins*, No. M2004-01352-COA-R3-CV, slip op. at 3-4 (2005 WL 3487798) (Dec. 20, 2005).

government to exercise certain powers that may be vested only in the judiciary? [Appellants' Issue No. 2].

- Whether the Commissioner has the authority to sell the Hohenwald property upon approval of the Receivership Court. [Appellants' Issue No. 3].³²

All of these issues were specifically raised and addressed by this Court in *Sentinel Trust I*.

Indeed, in that decision this Court stated that the following issues were presented by Appellants for review:

1. Whether the Tennessee Banking Act is unconstitutional on its face by vesting in the Commissioner, a member of the Executive Branch of the government, powers which may be vested only in the judiciary, including the appointment of receivers, remove corporate directors, declare corporations insolvent?
 2. Whether the trial court erred when it held that the Tennessee Banking Act applies to the trust companies and whether the Commissioner exceeded his jurisdiction or acted illegally in taking possession of Sentinel Trust Company?
 3. Whether there exists substantial or material evidence in the record to support the Commissioner's decision to take possession of Sentinel Trust Company and subsequent decision to liquidate the company?
- * * *
6. Whether the Commissioner has the authority to sell the Bellevue Property upon approval of the receivership court?³³

With respect to the issue concerning the constitutionality of the Tennessee Banking Act (Appellants' Issue No. 2), the Court found that the powers enumerated in Tenn. Code Ann. § 45-2-1052 were powers required to enable the Commissioner to fulfill his statutory mandate under Tenn. Code Ann. § 45-1-102; that they were limited to those judicial powers reasonably necessary as an

³²Appellants' Brief at pp. 2-3.

³³*Sentinel Trust I* at 11.

incident to the accomplishment of the purposes for which the Department of Financial Institutions was created; and, therefore, that there is no violation of the separation of powers provisions of Art. II, § 2 of the Tennessee Constitution.³⁴

This Court further found in *Sentinel Trust I* that the Legislature had intended “to bring state trust companies under the umbrella of the Tennessee Banking Act” and that such intent was clear from the plain and ordinary meaning of the statutory language contained in Tenn. Code Ann. § 45-1-124(b) and (d). Accordingly, this Court found that Tenn. Code Ann. § 45-2-1502 vested full authority in the Commission to take possession of a Tennessee trust company under certain circumstances. (Appellants’ Issues No. 1 (i), (iv) and (vi)).³⁵

In determining whether the appropriate circumstances existed for the Commissioner to have exercised such authority, this Court not only addressed the issue of whether there was sufficient evidence to support the Commissioner’s decision to take possession of Sentinel and to subsequently liquidate the company, but also specifically addressed the issue of whether the Commissioner had denied Appellants their right to a pre-possession hearing (Appellants’ Issues No. 1(ii) and (iii)).³⁶ This Court found that, based upon Appellants’ own admissions that they were engaging in practices that not only violated the Tennessee Banking Act but also violated the FDIC’s Statement of Principales of Trust Department Management, which had been adopted as part of Sentinel’s corporate policies, as well as the indentures and contractual agreements between the bond issuers and Sentinel as fiduciary, there was ample evidence in the record to indicate that Sentinel’s business was being

³⁴*Id.* at 13.

³⁵*Id.* at 16.

³⁶*Id.* at 16-17.

conducted in an unsound manner and that the Commissioner was justified in taking possession of Sentinel Trust Company.³⁷

This Court further found, based again upon Mr. Bates' admission that there existed a significant deficiency in cash in the pooled fiduciary account as a result of Sentinel's business practices, that the bond issuers who had funds deposited in that account were at risk of serious loss and, therefore, the Commissioner was justified in taking emergency possession of the company without a prior hearing.³⁸ Finally, this Court found that the evidence in the record strongly preponderated in favor of the Commissioner's decision that the company was insolvent and should be liquidated. Specifically, this Court noted that

[t]he evidence before the Commissioner of an admitted multi-million fiduciary cash deficiency well in excess of Sentinel's net worth, the company's poor earning performance, the lack of any reserve in relation to losses, current operation at a net loss, and no plan or means of how the company would eliminate the deficiencies, provide a sound basis for the Commissioner's decision to liquidate Sentinel.³⁹

This Court also addressed in *Sentinel Trust I* the issue of the Commissioner's authority to sell assets of Sentinel Trust Company in the form of real property, which is the subject of the instant appeal (Appellants' Issue No. 3). In *Sentinel Trust I*, the Commissioner had obtained an order from the Receivership Court approving the sale of real property located in Davidson County, Tennessee, owned by Sentinel Trust Company and where Sentinel maintained a satellite office. This Court specifically found that the Commissioner and his appointed receiver were authorized, under Tenn.

³⁷*Id.* at 18.

³⁸*Id.*

³⁹*Id.* at 19.

Code Ann. § 45-2-1504, to sell this property upon approval of the receivership court and that such authorization did not violate the separation of powers provision of Art. II, § 2 of the Tennessee Constitution.⁴⁰ This Court also found that the Commissioner was not required to prove that he had recovered enough money in liquidation to overcome the negatives and that the only restriction placed upon the Commissioner's statutory authority in the sale of a financial institution's assets was the requirement that court approval first be obtained.⁴¹

All of these issues were clearly raised and decided in *Sentinel Trust I* and, therefore, should not be reconsidered by this Court in this appeal. Moreover, Appellants do not allege that any circumstances exist that would permit reconsideration of these issues. Indeed, Appellants appear to completely ignore the prior determinations of this Court in *Sentinel Trust I*. In any event, those decisions clearly are not erroneous and there has been no change in the controlling law between *Sentinel Trust I* and the current appeal. Finally, Appellants have presented no new evidence, but instead, rely solely upon the evidence presented in *Sentinel Trust I*. Accordingly, the Commissioner submits that the decisions of this Court in *Sentinel Trust I* with respect to the Commissioner's statutory authority to take possession and liquidate a trust company without a prior hearing and to liquidate the assets of the trust company, including the sale of its corporate assets, as well as the constitutionality of the statutes authorizing such actions, are the law of the case and should be followed by this Court in this appeal.

⁴⁰*Id.* at 22.

⁴¹*Id.* at 23.

B. The Receivership Court Did Not Err In Approving The Sale Of The Hohenwald Property.

Besides raising issues that have already been addressed by this Court in *Sentinel Trust I*, Appellants have raised the following issues with respect to the Receivership Court's order approving the sale of the Hohenwald property: (1) whether Tenn. Code Ann. § 45-2-1502(c)(2) only authorizes the Commissioner to sell the property to "another state or national bank or to the Federal Deposit Insurance Corporation" and (2) whether the sale of the property at 40% of its costs is unconscionable.⁴²

1. Tenn. Code Ann. § 45-2-1502(c)(2).

Tenn. Code Ann. § 45-2-1502(c)(2) provides as follows:

If the commissioner determines to liquidate the state bank, the commissioner shall give such notice of such determination to the directors, stockholders, depositors and known creditors. *Upon a determination to liquidate, the commissioner may, with ex parte approval of the court in which the notice of possession was filed, sell all or part of any part of the state bank's assets to another state or national bank or to the Federal Deposit Insurance Corporation.* The commissioner may also, with ex parte approval of the court, borrow from the Federal Deposit Insurance Corporation any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing bank and may assign any part or all of the assets of the state bank as security for such loan. (Emphasis added).

Appellants rely upon the highlighted language of this statute to assert that the Commissioner can only sell the assets of Sentinel Trust Company to another state or national bank or to the Federal Deposit Insurance Corporation. In making this argument, however, Appellants have completely ignored the specific language of Tenn. Code Ann. § 45-2-1504(a)(1), which provides as follows:

⁴²Appellants' Brief at 35.

In liquidating a state bank, the commissioner may exercise any power of the office of commissioner, but shall not, without the approval of the court in which notice of possession has been filed:

(1) Sell any asset of the organization having a value in excess of five hundred dollars (\$500);.

This statute clearly authorizes the Commissioner to sell the assets of a financial institution in liquidation, and as this Court found in *Sentinel Trust I*, the only restriction placed upon the Commissioner in selling such assets is the requirement that he obtain approval of the Receivership Court.⁴³ Furthermore, the motion filed by the Commissioner seeking such approval of the sale of the Hohenwald property clearly states that the Commissioner is proceeding pursuant to the provisions of Tenn. Code Ann. § 45-2-1504(a)(1), and not § 45-2-1502(c)(2).⁴⁴ Accordingly, Appellants' argument that the Receivership Court erred in approving the sale of the Hohenwald property because the purchaser was not another state or federal bank or the Federal Deposit Insurance Company is simply without merit.

2. Proof of the Reasonableness of the Sale Supports the Receivership Court's Approval of the Sale of the Hohenwald Property for \$450,000.

Appellants also appear to argue that the Receivership Court erred in approving the sale of the Hohenwald property because the sale price of \$450,000 is only 40% of the cost of the building. However, Appellants cannot demonstrate where the Receivership Court erred in approving such a purchase price as they presented *no* evidence that the fair market value of the property was different from the \$450,000 purchase price. Indeed, at the hearing on this matter, the following discourse was held in which Appellants' counsel specifically declined to present any evidence.

⁴³See fn. 41, *supra*.

⁴⁴T.R. Vol. 1, 1.

Mr. Schwendimann: If, Your Honor, please, we're cognizant of the Court's comment the last time we were here that you didn't intend to re-lick the calf with regard to certain issues. This objection is filed to preserve our rights of appeal. I don't think we can be denied that whether it's filed yesterday or six weeks ago. And I would point out to the Court that this appraisal is done on the basis of that building being exclusively used as a bank building. That's the only thing the appraiser approached. But our objection is of record. And that's all I have to say.

Chancellor Stafford: You wish to offer any evidence other than just making that statement? Sir?

Mr. Schwendimann: No.⁴⁵

The only evidence in the record is that the property in question had been listed and on the market for approximately seventeen (17) months prior to the negotiation of its purchase and that the \$450,000 purchase price was actually greater than the appraised value of the property (\$430,000).⁴⁶ Accordingly, Appellants' arguments, and arguments, which is all they have presented and which do not and cannot trump the undisputed facts in the record, are without merit. The Receivership Court's approval of the sale of the Hohenwald property was appropriate and should be upheld.

⁴⁵T.E. (April 12, 2006 hearing) at p. 13.

⁴⁶T.E. Vol., 22-25, 28-31.